

SERVICE DATE – FEBRUARY 8, 2013

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35522¹

CSX TRANSPORTATION, INC.—ACQUISITION OF OPERATING EASEMENT—GRAND
TRUNK WESTERN RAILROAD COMPANY

Decision No. 5

Digest:² The Board is approving CSX Transportation, Inc.'s application to acquire an operating easement over a rail line of the Grand Trunk Western Railroad Company in the Chicago area, as well as two related requests for trackage rights authority over the line, subject to environmental and standard employee labor protective conditions.

Decided: February 7, 2013

CSX Transportation, Inc. (CSXT) and Grand Trunk Western Railroad Company (GTW) have agreed to exchange perpetual rail operating easements over certain parts of each other's lines. GTW has agreed to grant CSXT an easement over a GTW line between Munster, Ind., and Elsdon, Ill. (Elsdon Line or Line), over which GTW would retain local and overhead trackage rights. CSXT has also agreed to convey local and overhead trackage rights over the Line to various GTW affiliates and a CSXT affiliate. The grant of the easement and related trackage rights on the Elsdon Line will be referred to in this decision as the Elsdon Transaction. In exchange for its easement over the Elsdon Line, CSXT has agreed to grant GTW an easement over a CSXT line between Leewood, Tenn., and Aulon, Tenn. (Leewood-Aulon Line), over which CSXT would retain local and overhead trackage rights.³

¹ This decision also embraces Baltimore & Ohio Chicago Terminal Railroad—Trackage Rights Exemption—CSX Transportation, Inc., FD 35522 (Sub-No. 1) and Chicago, Central & Pacific Railroad, Elgin, Joliet & Eastern Railroad, Illinois Central Railroad, & Wisconsin Central Ltd.—Trackage Rights Exemption—CSX Transportation, Inc., FD 35522 (Sub-No. 2).

² The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

³ In Docket No. FD 35661, GTW filed a petition for exemption under 49 U.S.C. § 10502 from the prior approval requirements at 49 U.S.C. §§ 11323-25 to acquire a permanent operating easement over the Leewood-Aulon Line, and we are granting the exemption in a decision served today in that docket.

This decision concerns the Elsdon Transaction. In Docket No. FD 35522, CSXT has filed an application for authority to acquire an operating easement from GTW over the Elsdon Line, and in the embraced Docket Nos. FD 35522 (Sub-No. 1) and (Sub-No. 2), a CSXT affiliate and the various GTW affiliates, respectively, seek authority to acquire trackage rights over the Line.

As discussed below, we are approving CSXT's application. The acquisition of the operating easement is not likely to result in a substantial lessening of competition or the creation of a monopoly or restraint of trade. Shippers would continue to have access to their current carriers. Furthermore, the easement would allow CSXT greater access to the Line, the ability to free capacity on the lines of other railroads, and the ability to dispatch more of its own trains. These benefits should allow it to provide more efficient service to shippers.

The Board's Office of Environmental Analysis (OEA) has reviewed the environmental impacts of CSXT's acquisition of the easement and the projected increased operations over the Elsdon Line, in order to take a hard look at potential environmental impacts, as required by the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370(f). Based on that analysis, OEA has determined that the transaction would not result in significant environmental impacts, assuming that the Board imposes OEA's final recommended mitigation conditions. Those measures address various environmental resource areas, including the impacts of increased operations on some segments of the Line on emergency response and on noise and vibration.

We have reviewed and agree with OEA's analysis, and we will impose the recommended mitigation conditions. Our mitigation conditions are set forth in Appendix A to this decision.

In addition, the American Train Dispatchers Association (ATDA) filed a comment concerning the labor impacts arising from CSXT's acquisition of the operating easement. As discussed below, we will impose standard labor protective conditions on the authority CSXT seeks in its application.

Finally, we will allow the two related verified notices of exemption to become effective. The trackage rights agreed to in these notices fall within the trackage rights class exemption at 49 C.F.R. § 1180.2(d)(7). These related transactions are also subject to labor protective conditions to mitigate any harm to employees.

BACKGROUND

CSXT owns and operates approximately 21,000 miles of railroad in 23 states (including Illinois and Indiana), the District of Columbia, and Canada. GTW owns and operates 642 miles of railroad in Illinois, Indiana, Michigan, Ohio, and Canada. GTW is directly controlled by Grand Trunk Corporation, which in turn is controlled by Canadian National Railway Company (CN).

CSXT and GTW have entered into an Agreement for Exchange of Perpetual Easements. To obtain the required Board authority to carry out their planned transactions, CSXT and GTW

have filed various requests for authority in Docket No. FD 35522 (and two related subdockets) and Docket No. FD 35661.

In this docket, CSXT filed an application pursuant to 49 U.S.C. § 11323(a)(2) and 49 C.F.R. pt. 1180 seeking approval to acquire an operating easement from GTW. Specifically, CSXT wishes to acquire an exclusive, perpetual, non-assignable railroad operating easement over 22.37 miles of GTW track on the Elsdon Subdivision between the connection with CSXT at Munster, Ind., milepost 31.07, and Elsdon, Ill., milepost 8.7, which connects to the southern end of the Corwith Yard of BNSF Railway Company (BNSF). GTW would retain local and overhead trackage rights over the Elsdon Line.⁴ Currently, CSXT operates over the Elsdon Line pursuant to trackage rights.⁵

CSXT supports its application by detailing efficiencies that it could achieve by acquiring the easement and by routing more trains over parts of the Elsdon Line. CSXT states that, once in the Chicago area, the carrier must currently use a combination of its own lines and other carriers' lines to move traffic to and from yards and terminals. It notes that the significant freight and passenger rail activity in the Chicago area affects the speed at which freight moves through the area. CSXT claims that, by acquiring the easement over the Elsdon Line, it would acquire a route that is not encumbered by the control of another rail carrier that must balance the competing priorities of multiple route users. CSXT claims that this new route would allow it to take its traffic off of other carriers' lines, dispatch more of its own trains, and operate more efficiently throughout the Chicago area. CSXT believes that the acquisition of its operating easement would therefore benefit itself, shippers and other railroads.

In addition, CSXT claims that its acquisition of the operating easement would further the goals of the Chicago Regional Environmental and Transportation Efficiency (CREATE) program, a public-private partnership consisting of the U.S. Department of Transportation, the State of Illinois, City of Chicago, Northeast Illinois Regional Commuter Railroad Corporation (Metra), and various Class I railroads that operate in the United States. The primary objective of CREATE is to increase the efficiency of the Chicago region's rail infrastructure by reducing train delays and congestion throughout the area.⁶ In particular, CSXT expects its increased

⁴ Under the agreement concerning GTW's retained trackage rights, GTW (referred to in the agreement as CN) agrees that its traffic shall not be limited over the Line, except that the total number of CN/Union Pacific Railroad Company (UP) interchange trains using the Line between Blue Island (at or near milepost 19.3) and Munster (milepost 31.07) will be limited to two trains in each direction per day. See CSXT's Application, Vol. 2, Exh. E of Exh. E, § 3.2 (filed Aug. 13, 2012). The agreement in Docket No. 35522 (Sub-No. 2), in which CSXT grants trackage rights to the GTW affiliates, includes a similar limit to two trains in each direction per day. See CSXT's Application, Vol. 2, Exh. F of Exh. E, § 3.2 (filed Aug. 13, 2012).

⁵ See CSX Transp., Inc.—Trackage Rights Exemption—Grand Trunk W. R.R., FD 35346 (STB served Feb. 12, 2010).

⁶ See CSXT's Application, Vol. 1, p. 25 (Aug. 13, 2012).

operations over the Line to enhance the benefits of two rail connections now under construction as part of CREATE known as the W-10 and B-16 connections.⁷

CSXT claims that its acquisition of the operating easement would not result in a substantial lessening of competition, creation of a monopoly, or restraint of trade in freight in any region of the United States. According to CSXT, there would be no reduction in the number of rail carriers serving any shipper. CSXT asserts that all of the railroads operating in the Chicago region would continue to serve that area. CSXT notes that GTW and its affiliates would be able to continue to use the Elsdon Line jointly via trackage rights and that other railroads would continue to be able to use their own routes.

In addition to the primary application, CSXT submitted two related notices of exemption. First, in Docket No. FD 35522 (Sub-No. 1), CSXT has agreed to grant its subsidiary, Baltimore & Ohio Chicago Terminal Railroad Company (B&OCT), local and overhead trackage rights over the Elsdon Line. Second, in Docket No. FD 35522 (Sub-No. 2), CSXT has agreed to grant several GTW affiliates—Chicago, Central & Pacific Railroad Company (CCP), Elgin, Joliet and Eastern Railroad Company (EJ&E), Illinois Central Railroad Company (IC), and Wisconsin Central Ltd. (WC)—local and overhead trackage rights over the Elsdon Line.

By decision served in these Elsdon proceedings on September 12, 2012, the Board established a procedural schedule and accepted the application in Docket No. FD 35522 and the related trackage rights exemptions. Based on the information provided in the application, we classified CSXT's acquisition of the operating easement as a "minor transaction" under 49 C.F.R. § 1180.2(c). We determined that, on the face of the application, there did not appear to be any clear anticompetitive effects that would result from CSXT's acquisition of the operating easement.⁸ We explained that our findings regarding competitive impacts were preliminary and that we would give careful consideration to any claims that the transaction would have anticompetitive effects that were not apparent from the application itself.

In another decision served on September 12, 2012, in Docket No. FD 35661, the Board instituted a proceeding and established a procedural schedule mirroring the one adopted in this docket because the two proceedings are related parts of the same overall negotiated easement exchange. The Board asked for notices of intent to participate in both proceedings and subsequently issued a service list.

The Board received comments on the merits of CSXT's application from the Illinois Chamber of Commerce, the Chicagoland Chamber of Commerce, and ATDA. Both chambers of commerce support CSXT's acquisition of the easement and increased operation over the Line, citing the anticipated increase in CSXT's operational efficiency. ATDA, the collective bargaining representative of the train dispatchers on the Line, filed a comment on November 8, 2012, concerning the train dispatchers that could be affected by the transaction. Finally, OEA received several comments during its environmental review, including a letter from Rep. Kelly Burke, an Illinois state representative serving Evergreen Park and parts of Chicago, expressing

⁷ See id. Exh. 22, p. 15-16.

⁸ See 49 C.F.R. § 1180.2(b).

concerns about the impact of the transaction on communities. We have added Rep. Burke's letter to the public docket.

DISCUSSION AND CONCLUSIONS

Statutory Criteria. A rail carrier's purchase, lease, or contract to operate the property of another rail carrier requires Board approval. 49 U.S.C. § 11323(a)(2).⁹ Because the proposed transaction does not involve the merger or control of two or more Class I railroads, this application is governed by the standard at 49 U.S.C. § 11324(d), which directs the Board to approve it unless we find that: (1) as a result of the transaction, there is likely to be substantial lessening of competition, creation of a monopoly, or restraint of trade in freight surface transportation in any region of the United States; and (2) the anticompetitive effects of the transaction outweigh the public interest in meeting significant transportation needs.

In assessing transactions subject to § 11324(d), our primary focus is on whether the transaction would have adverse competitive impacts that are both likely and substantial. Even if there will be likely and substantial anticompetitive impacts, we may not disapprove the transaction unless those impacts outweigh the transportation benefits and cannot be mitigated through the imposition of conditions. Moreover, "harms caused by the merger must be distinguished from pre-existing disadvantages that other railroads, shippers, or communities may have been experiencing that are not 'merger-related' (i.e., pre-existing disadvantages that will neither be caused nor exacerbated by the merger)." Canadian Nat'l. Ry. & Grand Trunk Corp.—Control—Duluth, Missabe & Iron Range Ry., Bessemer & Lake Erie R.R. & The Pittsburgh & Conneaut Dock Co., FD 34424, slip op. at 14 (STB served Apr. 9, 2004).

CSXT's acquisition of an operating easement over the Elsdon Line would not have any likely and substantial anticompetitive effects. As explained by CSXT, both it and GTW, as well as all other carriers, would continue to have access to the Elsdon Line and retain their existing rights to operate through the Chicago area. Shippers would continue to have the option of shipping to or from Chicago from the east, south, and southeast, using existing routes provided by Norfolk Southern Railway Company, UP, IC, CSXT, or short line operators such as the Chicago, Fort Wayne & Eastern Railway. The shippers could also control the route of their traffic to the extent there is an open route, and CSXT states that it would not close any routes as a result of its new operations.¹⁰ Furthermore, the competitive relationships between the area's various railroads, including other Class I carriers, Indiana Harbor Belt Line Railroad Company (IHB), Belt Railway of Chicago (BRC), and B&OCT would not change.¹¹ For all these reasons,

⁹ An easement is "property" under § 11323(a)(2). See Mass. Coastal—Acquis.—CSX Transp., Inc., FD 35314, slip op. 3 (STB served Mar. 29, 2010).

¹⁰ See id. Vol. 1, p. 24.

¹¹ See id.

the transaction would neither reduce competition nor create any substantial anticompetitive effects.¹²

Having found no likelihood of substantial anticompetitive effects from this transaction, we need not address whether the public interest outweighs any such effects. Nevertheless, based on the record, we note that CSXT's acquisition of the easement and operations over the Elsdon Line would likely create many public and private benefits. The application demonstrates that CSXT currently reaches its Chicago facilities by operating to, from, across, and over rail lines of a number of other carriers. Through this transaction, however, CSXT could divert its shipper traffic from the lines of these other railroads and more fully use the Elsdon route.¹³ In particular, CSXT expects to move trains off IHB's Franklin Park Branch, BRC's rail line east of Clearing Yard, UP's Villa Grove Subdivision north of Dalton, and a portion of the CSXT/UP Joint Line.

The new routing would also result in more efficient CSXT operations in the Chicago area. In fact, CSXT expects to reduce the aggregate time its trains take to operate through the Chicago area by at least 25 hours per day, resulting in savings that it estimates to be in excess of \$2 million per year.¹⁴ We believe that these efficiencies would allow CSXT to provide better transit times, connection standards, and overall customer service.

The new operations would also advance the goals of CREATE, a program meant to increase the efficiency of the Chicago region's rail infrastructure by reducing train delays and congestion throughout the area. In particular, the proposed transaction would help CREATE's W-10 connection and B-16 connection better serve their respective purposes. In supporting the transaction, the Illinois and Chicagoland Chambers of Commerce both note that the Elsdon Transaction would enhance the CREATE program.

Finally, we find that, taken together, both elements of the CSXT-GTW easement exchange (the Elsdon Transaction and the Leewood-Aulon Line transaction in Docket No. 35661) are in the public interest. As is the case here and in the decision we are serving today in Docket No. FD 35661, the overall transaction should allow both carriers more efficient routings without eliminating service options for shippers.

¹² As we noted above and in the September 12 decision accepting CSXT's application, GTW would retain trackage rights over the Line that place no limit on operations except that the total number of CN/UP interchange trains using the Line between Blue Island (at or near milepost 19.3) and Munster (Milepost 31.07) will be limited to two trains in each direction per day. See CSXT's Application, Vol. 2, Exh. E of Exh. E, § 3.2 (filed Aug. 13, 2012). UP has not objected to this limitation. The agreement in Docket No. 35522 (Sub-No. 2) in which CSXT grants trackage rights to the GTW affiliates includes a similar limit of two trains in each direction per day.

¹³ CSXT's Application, Vol. 1, p. 18 (Aug. 13, 2012).

¹⁴ See id. Vol. 1, p. 21.

Labor Protective Conditions

ATDA filed a comment concerning labor issues. Although ATDA takes no position on the merits of the application, it fears that its train dispatchers might be adversely affected by CSXT's acquiring the operating easement and assuming dispatching responsibilities for the Line. ATDA notes that CSXT anticipates integrating dispatching for both the Monon Subdivision and the Elsdon Line.¹⁵

ATDA asks that, if the Board approves acquisition of the operating easement, the agency should impose labor protective conditions set forth in New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C.2d 799, 814-826 (1990) (New York Dock), and expressly state that those conditions are to be applied to CSXT and former GTW, now WC, train dispatchers.¹⁶ Furthermore, ATDA notes that the dispatchers who currently control rail traffic over the Elsdon Line are employed under a collective bargaining agreement (CBA) between ATDA and WC. ATDA, although not opposing the transaction, suggests that the transfer of the train dispatching over the Line is not necessary for CSXT to reap the efficiencies discussed above. If the Board finds this to be the case, ATDA asks that the Board condition the transaction on the preservation of the train dispatchers' rights under the ATDA-WC collective bargaining agreement. CSXT and GTW filed separate comments responding to ATDA's filing.

Under 49 U.S.C. § 11326(a), we must impose employee protective conditions on our approval of the transaction. The appropriate conditions are those set out in New York Dock, and we will impose those conditions in this decision.

Although ATDA raises general concerns about some of the employees it represents being adversely affected by the transaction, GTW states that CN does not plan to abolish any dispatching positions as a result of the transaction in this case.¹⁷ GTW acknowledges that eligible employees adversely affected by the transaction, whether mentioned in the application or not, will be protected by applicable protective conditions.¹⁸ GTW also recognizes that it (or one

¹⁵ See CSXT's Application, Vol. 1, p. 17 (Aug. 13, 2012).

¹⁶ ATDA asserts that, pursuant to authority granted in Canadian National Railway et al.—Control—Illinois Central Corp. et al., 4 S.T.B. 122 (1999) and Canadian National Railway et al.—Control—Wisconsin Central Transportation Corp. et al., 5 S.T.B. 890 (2001), CN transferred responsibilities for train dispatching over the GTW and WC lines, and employees who performed those responsibilities, to Homewood, Ill. Following implementing agreement arbitration, the train dispatching workforces of GTW, WC, and IC have been merged under the WC collective bargaining agreement (CBA) with ATDA, which is certified representative of the consolidated workforce. The dispatchers responsible for controlling traffic on former GTW lines are now WC employees.

¹⁷ See GTW's Reply n. 2 (Nov. 28, 2012).

¹⁸ See id. 2.

of its affiliates) would be responsible for employee agreements “to the extent that any rearrangement of forces is required by this transaction, and any changes to collective bargaining agreements may be necessary.”¹⁹ GTW goes on to state: “GTW agrees with ATDA that ‘the Board must assure that no train dispatcher affected by the transaction is deprived of the protection the law requires’, but points out that in order to assure that outcome the only action presently required of the Board is imposition of *New York Dock* conditions (modified by *Wilmington Terminal*), as requested by CSXT.”²⁰ Accordingly, New York Dock will apply to the dispatchers employed on the Elsdon Line by WC, GTW’s affiliate. Should issues arise about the labor protective conditions, those can be resolved through future negotiations or, if need be, arbitration provided under New York Dock. To the extent that ATDA seeks additional relief specific to dispatchers beyond the application of New York Dock (for example, conditioning the transaction on the preservation of rights under the ATDA-WC collective bargaining agreement), ATDA has failed to show that such additional relief is warranted or that the New York Dock conditions are insufficient.²¹

Related Notices of Exemption

As discussed more fully below, CSXT included two related notices of exemption with its application. The actions proposed in these notices qualify for the trackage rights class exemption under 49 C.F.R. § 1180.2(d)(7), and we are allowing these exemptions to take effect on the effective date of this decision.

Docket No. FD 35522 (Sub-No. 1). CSXT has agreed to grant B&OCT²² local and overhead trackage rights over the Elsdon Line. The trackage rights being granted to B&OCT include the right to use all sidings, yard tracks, and yard leads now existing or later constructed along the Elsdon Line, as well as right-of-way for those tracks and for signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to their use.²³ B&OCT asserts that, through these trackage rights, it and CSXT are seeking to maximize

¹⁹ Id. 3.

²⁰ Id. 6 (citations omitted).

²¹ See CSX Corp. et al.—Control & Operating Leases/Agreements—Conrail Inc. et al., 3 S.T.B. 196, 329 (1998), aff’d sub nom. Erie-Niagara Rail Steering Committee v. STB, 247 F.3d 437 (2nd Cir. 2001).

²² B&OCT is a wholly owned subsidiary of CSXT that operates in Illinois and Indiana.

²³ The rights also include the right to enter and exit at: (1) CSXT’s connection with GTW at or near milepost 31.07 in Munster, Ind.; (2) CSXT’s connection with UP at or near milepost 25.2 (Thornton Jct.) in Thornton, Ill.; (3) CSXT’s connection with IC at or near milepost 23.2 (CN Junction) in Harvey, Ill.; (4) CSXT’s connection with IC at or near milepost 22.6 in Harvey, Ill.; (5) CSXT’s connection with IHB at or near milepost 19.3 (Blue Island Jct.) in Blue Island, Ill.; (6) CSXT’s connection with BRC at or near milepost 11.8 (Hayford Junction) on CSXT’s Elsdon Line in Chicago, Ill.; (7) CSXT’s connection to GTW at or near milepost 8.7 in Elsdon Ill.; (8) CSXT’s connection with BNSF at or near milepost 8.7; (9) CSXT’s connection

operational efficiency so that B&OCT trains can be operated over the Elsdon Line. B&OCT also asserts that the trackage rights will reduce congestion and enhance efficiency in the Chicago area. The parties intend to consummate this transaction upon the closing of CSXT's easement acquisition from GTW. We will allow this exemption to take effect, subject to the standard labor protection conditions set forth in Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railway, 360 I.C.C. 653 (1980) (N&W).

Docket No. FD 35522 (Sub-No. 2). CSXT has agreed to grant CCP, EJ&E, IC, and WC²⁴ local and overhead trackage rights over the Elsdon Line.²⁵ The trackage rights being granted include the right to use all sidings, yard tracks, and yard leads now existing or later constructed along the Elsdon Line, as well as right-of-way for those tracks and for signals, interlocking devices and plants, telegraph and telephone lines, and other appurtenances necessary to their use.²⁶ According to the filing, the purpose of the trackage rights is to provide operational flexibility to CN, permitting it to use the trains and crews of its railroad subsidiaries operating in the Chicago area to handle freight over the Elsdon Line following CSXT's acquisition of the easement. The parties intend to consummate this transaction upon the closing of CSXT's easement acquisition from GTW. We will allow this exemption to take effect subject to the standard N&W labor protective conditions.

with the IHB at or near milepost 8.7; and (10) any other existing or new location(s) that the parties may mutually agree upon.

²⁴ CCP, IC, and WC are subsidiaries of CN and GTW. Recently, EJ&E, formerly a subsidiary of WC, merged into WC, with WC as the surviving entity. See Wis. Cent.—Intra-Corp. Family Merger Exemption—Elgin, Joliet & E. Ry., FD 35630 (notice of consummation filed Jan. 4, 2013).

²⁵ These subsidiaries currently have trackage rights over the line granted by GTW. GTW and CSXT have agreed that CSXT will not be assigned those existing agreements; instead, CSXT will grant new local and overhead trackage rights over the Elsdon Line to the GTW affiliates.

²⁶ The rights also include the right to enter and exit at: (1) CSXT's connection with GTW at or near milepost 31.07 (Munster) on CSXT's Elsdon Line in Munster, Ind.; (2) CSXT's connection with the UP at or near milepost 25.2 (Thornton Jct.) on CSXT's Elsdon Line in Thornton, Ill.; (3) CSXT's connection with IC at or near milepost 23.2 (CN Junction) on CSXT's Elsdon Line in Harvey, Ill.; (4) CSXT's connection with IC at or near milepost 22.6 (CJ) on CSXT's Elsdon Line in Harvey, Ill.; (5) CSXT's connection with IHB at or near milepost 19.3 (B.I. Junction) on CSXT's Elsdon Line in Blue Island, Ill.; (6) CSXT's connection with BRC at or near milepost 11.8 (Hayford Junction) on CSXT's Elsdon Line in Chicago, Ill.; (7) CSXT's connection to GTW at or near milepost 8.7 on CSXT's Elsdon Line in Elsdon Ill.; (8) CSXT's connection with BNSF at or near milepost 8.7 on CSXT's Elsdon Line; (9) CSXT's connection with the IHB at or near milepost 8.7 on CSXT's Elsdon Line; and (10) any other existing or new location(s) that the parties may mutually agree upon.

Environmental Issues

The Requirements of NEPA. NEPA directs federal agencies to consider the environmental consequences of proposed federal actions and inform the public concerning those effects. Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, 462 U.S. 87, 97 (1983). The purpose of NEPA is to focus the attention of the government and the public on the likely environmental consequences of a proposed action before it is implemented, in order to minimize or avoid potential negative environmental impacts. Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 371 (1989).

The level of NEPA review depends upon the potential for significant impacts. Actions that generally have significant effects on the environment require the preparation of a full Environmental Impact Statement (EIS).²⁷ Actions that may, or may not, have a significant impact ordinarily require the preparation of a more limited Environmental Assessment (EA).²⁸ Finally, actions whose environmental effects are ordinarily insignificant normally may be excluded from case-specific NEPA review absent extraordinary circumstances (“categorical exclusion”).²⁹

The Board generally prepares an EA in mergers, acquisitions, or changes of control under 49 U.S.C. § 11323 where the proposal would exceed certain thresholds—generally an increase in rail traffic of at least three or eight trains a day,³⁰ or 100% in traffic (measured in gross ton miles annually). 49 C.F.R. § 1105.6(b)(4); 49 C.F.R. §§ 1105.7(e)(4), (e)(5).

The Environmental Review Process. As explained in the decision accepting CSXT’s application, the thresholds for environmental review are met in this case because the projected increases in train traffic on some segments of the Elsdon Line will exceed three trains per day. Accordingly, OEA prepared a Draft EA to help the Board consider the potential environmental effects associated with the application and to allow the public to participate in the environmental review process. OEA issued its Draft EA on October 5, 2012, for a 35-day comment period.

In its Draft EA, OEA conducted a thorough analysis of the potential environmental impacts associated with consummating the transaction proposed in the application.³¹ The Draft

²⁷ See 40 C.F.R. § 1501.4(a)(1); 49 C.F.R. §§ 1105.4(f), 1105.6(a)(1).

²⁸ See 40 C.F.R. § 1501.4(c); 49 C.F.R. §§ 1105.4(d), 1105.6(b).

²⁹ See 40 C.F.R. §§ 1500.4(p), 1501.4(a)(2), 1508.4; 49 C.F.R. § 1105.6(c). In this case, the trackage rights exemptions are categorically excluded from environmental review.

³⁰ The Board’s thresholds depend on whether the transaction is in an attainment area under the Clean Air Act. Here, because the transaction involves Chicago, a non-attainment area, the applicable threshold is an increase in rail traffic of at least three trains a day. In an attainment area, the higher eight-train per day threshold would apply.

³¹ CSXT plans to increase train traffic on three segments of the Elsdon Line by between 10 and 19.5 trains per day. Train traffic on the other three segments of the Line will decrease or stay the same.

EA provided detailed information on the purpose and need for the easement acquisition, described the proposed transaction and the no-action alternative, set forth the affected environment and potential environmental effects, and presented CSXT's voluntary mitigation and OEA's additional environmental mitigation recommendations.³² The Draft EA concluded that the transaction would not adversely affect traffic and grade crossing delay, rail safety and operations (including hazardous materials transport), land use, socioeconomics, geology and soils, water resources, biological resources, air quality and climate, energy, cultural resources, or environmental justice.³³ The environmental analysis found that the transaction would cause some adverse effects on emergency response and on noise and vibration, but that imposing the recommended environmental mitigation in the Draft EA would reduce these impacts below the level of significance.

OEA received 10 comment letters on the Draft EA, including the letter from Rep. Burke and a letter from CSXT, dated December 12, 2012, that presented additional information from CSXT in response to the comment letters received and provided updated information on CSXT's outreach efforts. After carefully reviewing and considering the comments, OEA issued a Final EA addressing them on January 9, 2013. The Final EA reaches the same conclusion as the Draft EA: that there is no need to prepare an EIS in this case, because the transaction will not result in significant environmental impacts if the Board imposes the final mitigation measures recommended by OEA. That mitigation consists of 50 mitigation conditions, including voluntary mitigation and additional mitigation developed by OEA, addressing such issues as emergency response, noise and vibration, rail safety, hazardous materials transportation, and traffic and grade crossing delay, some of which were modified in response to comments on the Draft EA.

Our Conclusions on the Environmental Issues. We have reviewed the entire environmental record, including the Draft EA issued for public review and comment, the Final EA, and all public comments. We adopt all of OEA's analysis and conclusions in the Draft EA and the Final EA, including those not specifically discussed in this decision. The environmental record shows that the Board has taken the requisite "hard look" at the potential environmental effects associated with granting CSXT's application. Based on the environmental review, the transaction will not adversely affect most of the environmental resource areas studied in the Draft EA. The principal environmental issues associated with this transaction pertain to impacts to emergency response and noise and vibration. However, as explained below and in the Draft and Final EA, the mitigation we are imposing will reduce these impacts below the level of significance.

We will briefly address here some of the issues that were of particular concern to commenters during the EA process.

³² Voluntary mitigation, once imposed by the Board, becomes mandatory. Moreover, here, mitigation measure MM 1, developed by OEA, specifically provides that CSXT shall comply with all its voluntary mitigation measures.

³³ See Draft EA Chapter 3.

Emergency Response. In the Draft EA, OEA explained that train traffic increases of 19.5 trains per day at the 95th Street crossing would affect emergency response operations to the Advocate Christ Medical Center in Oak Lawn, Ill., and the Little Company of Mary Hospital in Evergreen Park, Ill. While CSXT anticipated that the 95th Street crossing would not be blocked longer than the 2.5 minutes it would take a CSXT train to clear the crossing, OEA noted that there is no grade separation or alternative routes featuring grade separations near these hospitals.³⁴ The closest existing grade separations are at 67th Street to the north and Vermont Street to the south, near Metro Medical Center at Blue Island, Ill.³⁵ However, there are many other roads, albeit without grade separated crossings, that provide alternative routes along the Line.³⁶

In its Draft EA comments, however, the Little Company of Mary Hospital raised concerns that the increase in train traffic on the Elsdon Line would cause vehicle delays that would delay physicians, patients, staff, and emergency responders while en route to the hospital. Rep. Burke also raised emergency response concerns.

OEA responded to these concerns in the Final EA, explaining that its final recommended mitigation would reduce potential impacts to emergency response below the level of significance. We agree. First, mitigation measure MM 2 will require CSXT to provide a closed circuit television system (or comparable system), with a camera in each direction at the 95th Street crossing. The video camera(s) would transmit a signal to a specific place where they would be directly linked to live video monitors at designated emergency response dispatch centers. This will provide emergency dispatchers with information to use to monitor train movements and route emergency response vehicles to the grade crossings closest to Advocate Christ Medical Center and Little Company of Mary Hospital that have been cleared by passing CSXT trains, if necessary, thus significantly reducing the possibility of impacts on emergency services due to the transaction. Second, MM 4 will require CSXT to establish a community liaison to consult with affected communities, businesses, and appropriate agencies; develop cooperative solutions to local concerns; be available for public meetings; and conduct outreach. In addition, voluntary mitigation measure VM 6 will require CSXT to operate under U.S. Operating Rule 526, which requires trains to be cut to clear a blocked crossing if the blockage is likely to exceed 10 minutes. Moreover, as proposed by CSXT, VM 37 will require CSXT to notify Emergency Services Dispatching Centers of crossings blocked by stopped trains where there are significant delays. Consistent with VM 6, we will view a significant delay for purposes of VM 37 as a delay that exceeds 10 minutes.

The Village of Evergreen Park asked that the Board impose a condition requiring CSXT to restrict the number of trains on the Elsdon Line or provide an underpass at the 95th Street crossing. OEA concluded, however, that a need for a grade separated crossing had not been shown. As explained in the Final EA,³⁷ the impacts of the transaction on the 95th Street crossing

³⁴ See Final EA vi.

³⁵ See Draft EA 3-45 and 3-48.

³⁶ See id. 3-47.

³⁷ See Final EA 19-20.

will not exceed the Federal Highway Administration (FHWA) criteria, which include consideration of vehicle delay, roadway classification, average daily vehicular traffic, and numbers of trains per day. In addition, CSXT has indicated that it will not route a train onto the Elsdon Line unless the Elsdon Line is clear and the point of exit is clear when the train reaches that point. CSXT's intention is to enable trains entering the Elsdon Line to operate over the Line at the maximum allowable speed without stopping. Under the transaction, CSXT will also control dispatching on the Elsdon Line, thereby allowing other carriers' trains entering the Elsdon Line to operate at the maximum allowable speed without stopping. This should further minimize any potential impacts on emergency services resulting from increased CSXT train traffic due to this transaction. In these circumstances and in light of the extensive local road network noted above, the mitigation recommended in the Final EA is adequate to reduce the impact on emergency response below the level of significance. We see no need for the additional mitigation requested by the Village of Evergreen Park.

Congestion, Safety, and Community Impacts. Rep. Burke raised concerns that additional freight trains on the Line would have negative effects on neighborhoods and communities, such as Evergreen Park. The Board's environmental review, however, adequately addressed and responded to all of the issues Rep. Burke raised regarding community impacts.

With respect to the potential for negative effects on affected communities, the Final EA explained that the existing Elsdon Line serves as a boundary between neighborhoods and communities and that the communities in the area developed around the Line so that the transaction would not affect, separate, or isolate any distinct neighborhoods from community resources. As for Rep. Burke's concerns regarding vehicle delay at the grade crossing at 94th Street and Kedzie Avenue, the Draft EA found that no vehicle delay thresholds would be met or exceeded at that crossing and that there would be little potential for increases in air pollution from idling automobiles and trucks at local grade crossings as a result of the transaction. In regard to Rep. Burke's concerns regarding safety at the 94th Street and Kedzie Avenue crossing, OEA's analysis showed the crossing did not have a high predicted accident frequency of more than 0.15 accident per year.³⁸

Moreover, the mitigation we are imposing will assist in keeping the public informed about the planned additional train traffic and provide an opportunity for communities to consult with CSXT to develop cooperative solutions to local concerns. Condition MM 4 requires that CSXT establish a community liaison prior to initiating the operational changes associated with approving the application and for one year following the startup of these operations. In addition, CSXT will be required to install signs to alert drivers of increased train traffic (VM 9), remove obstructions from crossings (VM 12), examine warning devices (VM 13), assure that crossings meet safety standards (VM 14), and provide contact information to allow individuals to report problems (VM 15). CSXT must also cooperate with school and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted (VM 16); provide information and railroad safety to nearby schools (VM 17); cooperate with the appropriate agencies prior to relocating, upgrading, or modifying highway/rail at-grade crossing warning devices on the Elsdon Line (VM 18); and adhere to all applicable Occupational Safety and

³⁸ See Draft EA 3-36 through 3-38.

Health Administration, Federal Railroad Administration (FRA), and state regulations to minimize the potential for incidents on the Elsdon Line (VM 19). Finally, VM 20 and VM 21 will require CSXT to make Operation Lifesaver rail safety education programs available to communities and appropriate entities located along the Elsdon Line. Given the results of the environmental analysis, we agree with OEA's conclusion in the Final EA that these mitigation measures are sufficient to address the concerns raised by Rep. Burke.

Noise and Vibration. The Draft EA explained that, without mitigation, the increased transaction-related operations would affect a total of 1,014 noise-sensitive receptors on the three segments of the Elsdon Line that would experience more train traffic.³⁹ In its comment letter on the Draft EA, the City of Blue Island raised concerns about noise, indicating that it would be difficult to absorb the noise from the anticipated increase in train traffic and that it cannot afford to construct Quiet Zones (areas where horns do not need to be routinely sounded because alternate safety measures are in place). Blue Island therefore requested a special whistle-blowing exemption within its city limits. In addition, the Village of Evergreen Park requested that the Board impose a condition requiring CSXT to install continuously welded rail and implement other mitigation measures to address noise and vibration.

The Final EA found that no noise mitigation beyond that recommended in the Draft EA was warranted, and we accept that recommendation. As OEA explained, VM 11 will require CSXT to cooperate with interested communities for the establishment of Quiet Zones and assist in identifying supplemental or alternative safety measures, practical operational methods, or technologies that might enable the community to establish Quiet Zones. Under VM 39, CSXT will be required to work with affected communities with sensitive receptors that would experience an increase of at least 5 dBA and reach 70 dBA to mitigate train noise to levels as low as 70 dBA by cost effective means as agreed to by an affected community and CSXT.⁴⁰ In the absence of such an agreement, CSXT will be required to implement cost effective mitigation that could include installing continuously welded rail, and constructing noise control devices such as noise barriers and installing vegetation or berming. VM 40 will require CSXT to lubricate curves where doing so would be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors. Moreover, CSXT will continue to employ safe and efficient operating procedures that reduce noise such as: inspecting rail car wheels to maintain wheels in good working order and minimize the development of wheel flats; inspecting new and existing rail for rough surfaces and, where appropriate, grinding these surfaces to provide a smooth rail surface during operations; regularly maintaining locomotives; keeping mufflers in good working order; and removing or consolidating switches determined by CSXT to no longer be needed. VM 41 will require that CSXT consult with communities affected by wheel squeal at existing locations on the Elsdon Line. Under VM 42, CSXT will install and maintain rail and rail beds according to AREMA standards, and VM 43 will require CSXT to comply with FRA regulations establishing decibel limits for train operations.

³⁹ See Draft EA 2-11.

⁴⁰ The term "dBA" refers to decibels adjusted to make noise more analogous to noise perceived by the human ear.

In addition to this noise mitigation, CSXT agreed in its letter dated December 12, 2012, to assist and support Blue Island in seeking funding to develop a Quiet Zone for the segment of the Line that is not part of the Quiet Zones that are already on the Line.⁴¹ CSXT has also indicated that it will install continuously welded rail where doing so would be consistent with its rail operations and normal maintenance and replacement procedures. And CSXT's community liaison (required by MM 4) will be available to consult with affected communities on concerns related to noise and vibration. The Final EA found that, in these circumstances, the transaction's adverse effects on noise would be reduced below the level of significance. We agree with OEA's analysis and conclusions.

Metra. In its comments on the Draft EA, Metra contended that the proposed mitigation measures in the Draft EA do not adequately address the potential for increased delays to Metra's commuter rail service on its SouthWest Service (SWS) Line, where it crosses Elsdon Line segment GTW-05 at Ashburn, Ill. Metra stated that freight traffic is already a major source of its delays on the SWS Line, with a reported 38 delays at Ashburn and 36 at Chicago Ridge in 2011.⁴²

Metra requested that the Board impose the following two conditions: (1) that CSXT evaluate the feasibility of a railroad-to-railroad grade separation at Ashburn, and (2) that the Board monitor Metra delays at both Ashburn and Chicago Ridge for at least three years, and if the delays increase, require that CSXT take corrective action to limit the length of its freight trains, create grade separations, or provide other appropriate corrective measures. Metra also stated that it is considering using a portion of the Villa Grove Subdivision for its future SouthEast Service (SES) Line and requested that CXST be required to evaluate and mitigate any reduced capacity that might occur as a result of the Elsdon Transaction.

Metra has not supported these requests. As the Final EA explained, the mitigation requested by Metra is not necessary because there are existing forums and protocols in place for modifying and monitoring the relations and operations of freight railroads and commuter railroads in the Chicago area. For example, as CSXT explains in its December 12 letter, the Chicago Transportation Coordination Office (CTCO) was formed in 2000 to maximize the communications and operations of the railroads in Chicago. CTCO participants, including Metra and CSXT, already use this forum to discuss daily operations; resolve operating conflicts; and conduct long-range planning that takes into account rail capacity and rail operations. The Chicago Planning Group (CPG) represents the railroads' interests in the Chicago area but also includes representatives from the City of Chicago, the State of Illinois, the Association of American Railroads (AAR), and FHWA. CPG members meet quarterly to discuss and resolve operational and safety issues. CTCO and CPG provide support to rail infrastructure improvement projects in Chicago through the CREATE program and together have resolved

⁴¹ See CSXT's Letter 3.

⁴² Rep. Burke raised similar concerns.

numerous transportation issues in the Chicago area.⁴³ The record does not suggest that those avenues for resolving disputes have been ineffective.

Furthermore, OEA's final recommended mitigation includes MM 3, which specifically requires CSXT to negotiate service-related issues that might arise with Metra and other stakeholders. In addition, CSXT has indicated that it will give Metra trains priority over the railroad-to-railroad crossings at Ashburn that concern Metra.⁴⁴ Also, as previously noted, CSXT trains will only enter the Elsdon Line if they can move on the Line in continual, uninterrupted movements. Finally, our mitigation requires CSXT to abide by U.S. Operating Rule No. 526 (VM 6) and VM 37 (requiring, among other things, that CSXT notify emergency service dispatching centers in the event of significant delays, *i.e.*, those exceeding 10 minutes). For these reasons, we find that the concerns raised by Metra have been adequately addressed in the Draft and Final EA and that no additional mitigation is necessary.

Rep. Burke raised concerns that Metra would be precluded from adding more trains to its SWS Line. However, the Draft EA considered the SWS Line as part of its analysis of commuter rail service and properly concluded that commuter service should not be affected by this transaction. In addition, mitigation measure VM 8 will require CSXT to engage Metra in exploring all options for future service, and MM3 will specifically require CSXT to negotiate with Metra regarding any issues that might arise regarding transaction-related impacts to Metra's SWS Line.

Amtrak. The Environmental Law and Policy Center (ELPC) commented that a portion of the Elsdon Line between Thornton Junction and CN Junction, Ill. might be used as a temporary reroute of Amtrak's Cardinal Line. ELPC suggested that OEA might need to examine the effect of the interim reroute on CSXT's proposed operations. It also requested that VM 7 be broadened to require CSXT to work with Amtrak about this possible reroute. That condition as drafted would only require CSXT to work with Amtrak on transferring its relationship from GTW to CSXT and incorporate the new arrangement into CSXT's existing operating agreement with Amtrak.

However, the Final EA explained that the reroute that ELPC discussed is related to CREATE projects that are in various stages of preliminary planning with their own NEPA analysis. Thus, any interim reroute would be (or was) considered as part of that process. Accordingly, as OEA concluded, any additional analysis regarding the Cardinal Line beyond that considered under the CREATE project process would be duplicative and not warranted as part of the NEPA review in this case.

OEA also recommended against broadening VM 7 as ELPC had requested, noting that VM 7 would already require CSXT to work with Amtrak on transferring its relationship on the Elsdon Line from GTW to CSXT. We agree with and adopt OEA's analysis and conclusions.

⁴³ See Final EA 16-18.

⁴⁴ See *id.* 17.

Routing of Hazardous Materials. As the Draft EA explained, under the transaction CSXT would route up to 133,831 carloads per year of hazardous materials onto the Elsdon Line, much of which would be rerouted from the Barr, Villa Grove, and Monon Subdivisions.⁴⁵ As a result, the Elsdon Line would become a “key route,”⁴⁶ as outlined in the AAR’s Circular No. OT-55-I. The Draft and Final EA concluded that, although the risk of an accident cannot be eliminated entirely, the existing regulatory framework in place for key routes would reduce the likelihood of such an accident or release of hazardous materials taking place. Moreover, as part of its voluntary mitigation, CSXT will work with affected communities by conducting outreach, training, and assistance related to hazardous materials transportation. CSXT will also provide a dedicated toll-free telephone number to the emergency response organizations located along the Elsdon Line, assist in hazardous materials training for emergency responders for affected communities, and conduct Transportation Community Awareness and Emergency Response Program workshops.⁴⁷ In these circumstances, we agree with OEA’s determination that the mitigation recommended in the Final EA related to the routing of hazardous materials is reasonable and sufficient.

Conclusion. CSXT’s acquisition of the operating easement would not have any likely and substantial anticompetitive effects and would benefit shippers, CSXT, and other railroads. Furthermore, the Draft EA and Final EA demonstrate that the Board has taken the requisite “hard look” at environmental issues in this case. The Board concurs with OEA’s detailed analysis and conclusions regarding the potential environmental impacts of the transaction. We are imposing as conditions to our approval the final mitigation measures recommended by OEA set forth in Appendix A, to reduce or eliminate the potential adverse impacts of the transaction. As the environmental review here shows, with these measures the effects on all the environmental areas examined, including emergency response, noise, and vibration, will be reduced to a level below significance.

It is ordered:

1. The application is approved, subject to (a) the conditions set forth at Appendix A; and (b) as discussed above, the employee protective conditions under New York Dock Railway—Control—Brooklyn Eastern District Terminal, 360 I.C.C. 60 (1979), as modified by Wilmington Terminal Railroad—Purchase & Lease—CSX Transportation Inc., 6 I.C.C.2d 799, 814-826 (1990).
2. The following related transactions are exempted from regulation under 49 U.S.C. § 10502:

⁴⁵ See Draft EA 3-42.

⁴⁶ A “key route” is an AAR designation developed to identify routes that carry more than 10,000 carloads of hazardous materials per year and thus warrant additional safety measures. Id.

⁴⁷ See Final EA 25-26.

(a) In Docket No. FD 35522 (Sub-No. 1), the trackage rights referenced in the notice filed on August 13, 2012, pursuant to the class exemption at 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), subject to the labor protective conditions under Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railway, 360 I.C.C. 653 (1980).

(b) In Docket No. FD 35522 (Sub-No. 2), the trackage rights referenced in the notice filed on August 13, 2012, pursuant to the class exemption at 49 C.F.R. §§ 1180.2(d)(7) and 1180.4(g), subject to the employee protective conditions under Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc., 354 I.C.C. 605 (1978), as modified in Mendocino Coast Railway—Lease & Operate—California Western Railway, 360 I.C.C. 653 (1980).

3. This decision will become effective on March 10, 2013.

4. Petitions to stay must be filed by February 19, 2013. Petitions to reopen must be filed by February 28, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey.

APPENDIX A

Traffic and Grade Crossing Delay

VM 1. CSXT shall, upon request, cooperate with municipalities and counties in support of their efforts to secure funding, in conjunction with appropriate state agencies, for grade separations where they may be appropriate under criteria established by relevant state Departments of Transportation.

VM 2. CSXT shall examine train operations for ways of reducing highway/rail at-grade crossing blockages.

VM 3. CSXT shall cooperate with the appropriate state and local agencies and municipalities to: Evaluate the possibility that one or more roadways listed in Table 3.1-1 of the Draft EA could be closed at the point where it crosses the Elsdon Line, in order to eliminate the at-grade crossing. Improve or identify modifications to roadways that would reduce vehicle delays by improving roadway capacity over the crossing by construction of additional lanes.

Assist in a survey of highway/rail at-grade crossings for a determination of the adequacy of existing grade crossing signal systems, signage, roadway striping, traffic signaling inter-ties, and curbs and medians.

Identify conditions and roadway, signal, and warning device configurations that may trap vehicles between warning device gates on or near the highway/rail at-grade crossing.

VM 4. In order to minimize the number of trains being stopped by operators at locations that block grade crossings on the Elsdon Line, CSXT shall work with other railroads to establish reasonable and effective policies and procedures to prevent other railroads' trains from interfering with CSXT's trains on the Elsdon Line.

VM 5. CSXT's design for wayside signaling systems shall be configured and implemented to minimize the length of time that trains or maintenance-of-way vehicles or activities block at-grade crossings or unnecessarily activate grade-crossing warning devices.

VM 6. CSXT shall operate under U.S. Operating Rule No. 526 (Public Crossings), which provides that a public crossing must not be blocked longer than 10 minutes unless it cannot be avoided and that, if possible, rail cars, engines, and rail equipment may not stand closer than 200 feet from a highway/rail at-grade crossing when there is an adjacent track. If the blockage is likely to exceed this time frame, then the train shall then be promptly cut to clear the blocked crossing or crossings.

Rail Operations

VM 7. CSXT shall work with Amtrak on transferring its relationship on the Elsdon Line from GTW to CSXT and incorporating such into CSXT's Operating Agreement with Amtrak.

VM 8. CSXT shall engage Metra in exploring all options for future service.

Rail Safety

VM 9. CSXT shall coordinate with the appropriate state agencies, counties, and affected communities along the Elsdon Line to install temporary notification signs or message boards, where warranted, in railroad ROW at highway/rail at-grade crossings, clearly advising motorists of the increase in train traffic on affected rail line segments. The format and lettering of these signs shall comply with Federal Highway Administration's *Manual on Uniform Traffic Control Devices* (FHWA 2007) and shall be in place no less than 30 days before and 6 months after the acquisition by CSXT of the Easement over the Elsdon Line.

VM 10. CSXT shall cooperate with interested municipalities impacted by noise as a result of the Proposed Transaction to determine any improvements necessary for existing Quiet Zones to maintain FRA compliance.

VM 11. CSXT shall cooperate with interested communities for the establishment of Quiet Zones and assist in identifying supplemental or alternative safety measures, practical operational methods, or technologies that may enable the community to establish Quiet Zones.

VM 12. Within six months of acquisition by CSXT of the easement over the Elsdon Line, in order to improve visibility at highway rail at-grade crossings, CSXT shall consult with affected communities about crossings where there are vegetation and other obstructions and take reasonable steps to clear the vegetation or other obstructions.

VM 13. Within six months of acquisition by CSXT of the easement over the Elsdon Line, CSXT shall coordinate with the Illinois Department of Transportation (IDOT), Indiana Department of Transportation (INDOT), and other appropriate local agencies to review corridors surrounding highway/rail at-grade crossings to examine safety and adequacy of the existing warning devices, and identify remedies to improve safety for highway vehicles.

VM 14. Where grade-crossing rehabilitation is mutually agreed to, CSXT shall assure that rehabilitated roadway approaches and rail line crossings meet or exceed the standards of the IDOT's and INDOT's rules, guidelines, or statutes, and the American Railway Engineering and Maintenance of Way Association (AREMA) standards, with a goal of eliminating rough or humped crossings to the extent reasonably practicable.

VM 15. For each of the public grade crossings on the Elsdon Line, CSXT shall provide and maintain permanent signs prominently displaying both a toll-free telephone number and a unique grade-crossing identification number in compliance with Federal Highway Administration's Regulations (23 C.F.R. Part 655). The toll-free number will enable drivers to report accidents, malfunctioning warning devices, stalled vehicles, or other dangerous conditions and will be answered 24 hours per day by CSXT personnel.

VM 16. Within six months of acquisition by CSXT of the easement over the Elsdon Line, CSXT shall cooperate with school and park districts to identify at-grade crossings where additional pedestrian warning devices may be warranted.

VM 17. CSXT shall continue ongoing efforts with community officials to identify elementary, middle, and high schools within 0.5 miles of the Elsdon Line's right-of-way (ROW) and provide informational materials concerning railroad safety to such identified schools.

VM 18. CSXT shall consult with IDOT, INDOT and other appropriate agencies and shall abide by the reasonable requirements of the Illinois Commerce Commission (ICC) or INDOT prior to constructing, relocating, upgrading, or modifying highway/rail at-grade crossing warning devices on the Elsdon Line.

VM 19. CSXT shall adhere to all applicable Occupational Safety and Health Administration, Federal Railroad Administration, and state construction and operational safety regulations to minimize the potential for accidents and incidents on the Elsdon Line.

Pedestrian and Bicycle Safety

VM 20. CSXT shall make Operation Lifesaver programs available to communities, schools, and other appropriate organizations located along the affected segments.

VM 21. To supplement CSXT's VM 20, CSXT shall make Operation Lifesaver programs available to communities, schools, and other appropriate organizations located along the Elsdon

Line for three years after the effective date of the Board's final decision granting the easement acquisition. The programs shall be designed and provided in coordination with ICC and INDOT.

Hazardous Materials Transportation

VM 22. CSXT shall comply with the current Association of American Railroads (AAR) "key route" guidelines, found in AAR Circular No. OT-55-I (AAR 2006) and any subsequent revisions to minimize risks related to transportation of hazardous materials on the line.

VM 23. CSXT shall comply with the current AAR's "key train" guidelines, found in AAR Circular No. OT-55-I and any subsequent revisions to minimize risks related to transportation of hazardous materials on the line.

VM 24. To the extent permitted and subject to applicable confidentiality limitations, CSXT shall distribute to each local emergency response organization or coordinating body in the communities along the key routes a copy of CSXT's current Emergency Response Plan.

VM 25. CSXT shall incorporate the Elsdon Line into its existing Emergency Response Plan.

VM 26. CSXT shall comply with all hazardous materials regulations of the U.S. Department of Transportation (including the Federal Railroad Administration (FRA) and the U.S. Pipeline and Hazardous Materials Safety Administration) and Department of Homeland Security (including the Transportation Security Administration) in all operations on the Elsdon Line. CSXT shall dispose of all materials that cannot be reused in accordance with applicable law.

VM 27. Upon request from local emergency response organizations, CSXT shall implement real-time or desktop simulation emergency response drills with the voluntary participation of local emergency response organizations.

VM 28. CSXT shall continue its ongoing efforts with community officials to identify the public emergency response teams located along the Elsdon Line and provide, upon request, hazardous material training.

VM 29. CSXT shall, upon request, conduct Transportation Community Awareness and Emergency Response Program (TRANSCAER) workshops (training for communities through which dangerous goods are transported) in communities along the Elsdon Line.

VM 30. CSXT shall, upon request, assist in hazardous materials training for emergency responders for affected communities. CSXT shall support through funding or other means the training of one representative from each of the communities located along the Elsdon Line where the transportation of hazardous materials would increase. CSXT shall complete the training within three years from the date that CSXT initiates operational changes associated with the Proposed Transaction.

VM 31. CSXT shall develop internal emergency response plans to allow appropriate agencies to be notified in an emergency, and to locate and inventory the appropriate emergency equipment. CSXT shall provide the emergency response plans to the relevant state and local authorities within six months of acquisition by CSXT of the easement over the Elsdon Line.

VM 32. CSXT shall provide a dedicated toll-free telephone number to the emergency response organizations or coordinating bodies responsible for communities located along the Elsdon Line. This telephone number will provide access to CSXT personnel 24 hours per day, seven days a week, enabling local emergency response personnel to obtain and provide information quickly regarding the transport of hazardous materials on a given train and appropriate emergency response procedures should a train accident or hazardous materials release occur.

VM 33. In accordance with the Emergency Response Plan, CSXT shall make the required notifications to the appropriate federal and state environmental agencies in the event of a

reportable hazardous materials release. CSXT shall work with the appropriate agencies such as U.S. Fish and Wildlife Service, Illinois Environmental Protection Agency, and Indiana Department of Environmental Management to respond to and remediate hazardous materials releases with the potential to affect wetlands or wildlife habitat(s), particularly those of federally threatened or endangered species.

VM 34. In the event any construction is necessary, CSXT shall comply with any regulations as required in the preparation of a construction Stormwater Pollution Prevention Plan.

VM 35. To supplement CSXT's VM 29, CSXT shall conduct TRANSCAER workshops in English and Spanish upon request for 3 years from the effective date of the Board's final decision authorizing the Proposed Transaction.

VM 36. In addition to CSXT's VM 33, CSXT shall adhere to all U.S. Environmental Protection Agency regulations as described in 40 C.F.R. Part 263, Standards Applicable to Transporters of Hazardous Waste, and shall coordinate with U.S. Environmental Protection Agency (USEPA), and state and local agencies on spill responses.

Emergency Response

VM 37. CSXT shall notify Emergency Services Dispatching Centers for communities along the affected segments of all crossings blocked by trains that are stopped and may be unable to move for a significant period of time. CSXT shall work with affected communities to minimize emergency vehicle delay by maintaining facilities for emergency communication with local Emergency Response Centers through a dedicated toll-free telephone number.

Air Quality and Climate

VM 38. CSXT shall comply with any appropriate USEPA emissions standards for diesel-electric railroad locomotives (40 C.F.R. Part 92) when purchasing and rebuilding locomotives.

Noise and Vibration

VM 39. CSXT shall work with affected communities with sensitive receptors that would experience an increase of at least 5 dBA and reach 70 dBA to mitigate train noise to levels as low as 70 dBA by cost effective means as agreed to by an affected community and CSXT. In the absence of such an agreement, CSXT shall implement cost effective mitigation that could include installing continuously welded rail, and constructing noise control devices such as noise barriers and installing vegetation or berming.

VM 40. CSXT shall lubricate curves where doing so would both be consistent with safe and efficient operating practices and significantly reduce noise for residential or other noise sensitive receptors. CSXT shall continue to employ safe and efficient operating procedures that, in lieu of, or as complement to, other noise mitigation measures could have the combined benefit of effectively reducing noise from train operations. Such procedures include:

Inspecting rail car wheels to maintain wheels in good working order and minimize the development of wheel flats;

Inspecting new and existing rail for rough surfaces and, where appropriate, grinding these surfaces to provide a smooth rail surface during operations;

Regularly maintaining locomotives, and keeping mufflers in good working order; and

Removing or consolidating switches determined by CSXT to no longer be needed.

VM 41. Upon request, CSXT shall consult with communities affected by wheel squeal at existing locations on the Elsdon Line, and cooperate in determining the most appropriate methods for implementing VM 40.

VM 42. To minimize noise and vibration, CSXT shall install and maintain rail and rail beds according to AREMA standards.

VM 43. CSXT shall comply with FRA regulations establishing decibel limits for train operations.

Environmental Justice

VM 44. In addition to VM 17, all of CSXT's informational materials concerning railroad safety shall be provided to elementary, middle, and high schools within 0.5 miles of the Elsdon Line in both English and Spanish.

Monitoring and Enforcement

VM 45. CSXT shall submit quarterly reports to the Board's Office of Environmental Analysis on the progress of, implementation of, and compliance with the mitigation measures for a period covering the first three years of operational changes associated with the Proposed Transaction.

VM 46. Within three years of the acquisition by CSXT, if there is a material change in the facts or circumstances upon which the Board relied in imposing specific environmental mitigation conditions, and upon petition by any party who demonstrates such material change, the Board may review the continuing applicability of its final mitigation, if warranted.

OEA's Environmental Mitigation

CSXT's Voluntary Mitigation

MM 1. CSXT shall comply with all voluntary mitigation measures.

Emergency Response

MM 2. In addition to VM 37, to further assist with the timely response of emergency service providers for the Advocate Christ Medical Center and the Little Company of Mary Hospital, CSXT shall consult with all appropriate agencies and hospitals to install a closed-circuit television system (CCTV) with video cameras (or another comparable system or acceptable option) so that the movement of trains can be predicted at the 95th Street highway/rail at-grade crossing. CSXT shall pay for the necessary equipment, the installation of the equipment, and equipment training for up to two individuals from each affected hospital. CSXT shall work with all appropriate agencies and hospitals to determine specifications and scheduling for the installation of the CCTV system. CSXT shall be responsible for the ongoing maintenance and operation of CCTV after the system is installed and operational.

Requested Consultation

MM 3. In response to concerns raised by the South Suburban Mayors and Managers Association (SSMMA), the City of Blue Island (one of the many communities represented by SSMMA), IDOT, and Metra on potential noise impacts and impacts to commuter train service as a result of the Proposed Transaction, CSXT shall negotiate with SSMMA, IDOT, and Metra with the goal of addressing these groups' concerns to the extent practicable regarding transaction-related noise and impacts to commuter rail service. In particular, negotiations should focus on transaction-related potential impacts to Metra's Rock Island District, Electric District, South-west Service

(SWS) Line, and the proposed South-east Service (SES) Line; as well as the feasibility of establishing Quiet Zones in communities along the Elsdon Line that would be affected by noise as a result of the Proposed Transaction.

Community Liaison

MM 4. In response to concerns raised regarding noise, emergency response, and other issue areas, CSXT shall, prior to initiating the operational changes associated with the Proposed Transaction and for a period of one year following the startup of operations on the Elsdon Line, establish a Community Liaison to consult with affected communities, businesses, and appropriate agencies; develop cooperative solutions to local concerns; be available for public meetings; and conduct periodic outreach. CSXT shall provide the name and phone number of the Community Liaison to elected public officials and community leaders in each community through which the rail line passes, including segments GTW-01 through GTW-06 on the Elsdon Line, and the U.S. Environmental Protection Agency's Environmental Justice Coordinator, the Illinois Environmental Protection Agency's Region 5 Environmental Justice Coordinator, and the City of Chicago's Affordable Chicago Program.